



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/161377

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Disability Services Division-DSD in regard to Medical Assistance, a hearing was held on November 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly dis-enrolled Petitioner effective October 14, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Bryon Rachow

Milwaukee Cty Disability Services Division-DSD
Attention: Mark Stein-DSD
1220 W. Vliet Street, Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was enrolled with and receiving services through the Community Care PACE program.

3. Petitioner's representative informed the program that she sought to dis-enroll Petitioner from the program effective October 14, 2014.
4. The program sent Petitioner notice that they were dis-enrolling him effective October 14, 2014 based upon his request.
5. On October 21, 2014 Petitioner's representative submitted a request for fair hearing stating that did not wish to dis-enroll Petitioner from the Community Care PACE program because Petitioner was not enrolled in an alternative program.
6. At the hearing Petitioner's representative was unsure which program she wanted Petitioner enrolled in. She had not received options counseling, but received this counseling following the hearing. After the options counseling Petitioner's representative decided that she wished to maintain Petitioner in the Community Care PACE program.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statutes, § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also, *Medicaid Eligibility Handbook* at §29.1 *et seq.*, available at <http://www.emhandbooks.wi.gov/meh-ebd/>. Whenever the local Family Care program decides that a person is to be terminated from the program, the client is allowed to file a fair hearing request. The petitioner did so here.

This case is unusual in that Petitioner's representative originally sought to dis-enroll Petitioner from the program, and to enroll him in some sort of alternative program. Petitioner's representative contacted the agency who dis-enrolled Petitioner, but did not enroll Petitioner into an alternative program. The agency maintains that they tried to do options counseling with Petitioner's representative, but Petitioner's representative did not complete that counseling. Petitioner's representative contends that the majority of her calls were not returned. Petitioner representative maintains that her intent was not to dis-enroll Petitioner from the community care PACE program, but rather to explore all of Petitioner's options to ensure that she was doing the best she could for Petitioner. Nonetheless, Petitioner's representative told the agency that she wished to dis-enroll Petitioner from the community care PACE program.

I note that Petitioner is incapacitated and it was actually his power of attorney who mistakenly communicated that she sought to dis-enroll Petitioner from the community case PACE program. She believed that she was acting in Petitioner's best interest, but did not communicate effectively with the agency. She appeared somewhat overwhelmed and confused by various programs. Nonetheless, she completed a form dis-enrolling Petitioner effective October 14, 2014. I conclude that Petitioner should be dis-enrolled effective October 14, 2014.

After the hearing Petitioner's representative completed a lengthy options counseling session, and completed a new enrollment form for the Community Care PACE program dated November 24, 2014. This creates a gap in coverage, however as a practical matter there will most likely be no gap in coverage as benefits were continued pending the outcome of the appeal.

CONCLUSIONS OF LAW

The agency correctly dis-enrolled Petitioner effective October 14, 2014 based upon Petitioner's wishes at that time.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of December, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 11, 2014.

Milwaukee Cty Disability Services Division-DSD
Office of Family Care Expansion